IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 861 of 2005
Date of Decision: 26.9.2006

The Managing Committee Gurudwara Thara Sahib ...Petitioners

Versus

The Presiding Officer and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri K.S. Dadwal, Advocate, for the petitioner.

JUDGMENT

The challenge in the present revision petition is to the order dated 25.1.2005 passed by the learned trial Court, whereby an application filed by the plaintiff-petitioner to prove the compromise dated 27.4.2003, by way of secondary evidence, was declined.

The said compromise is alleged to have entered upon between the parties in the Police Station. To prove the said compromise, the plaintiff has examined PW1 Pushpinder Jit Singh, Head Constable from the Police Station, Mahilpur. Though he has brought the record but it is stated by him that the original compromise is not available in the records of the Police Station. It is thereafter that the plaintiff has field the application for permission to lead secondary evidence. The learned trial Court declined such application on the ground that the statement of the witness Pushpinder Jit Singh is contrary to the averments made by the applicant-petitioner and that the said compromise is not sufficient to identify the parties or the subject matter and that the same is not signed by the members of the

Panchayat.

The reasoning given by the learned trial Court, while declining the permission to lead secondary evidence is not justified in law. Whether the document is relevant or not cannot be examined by the trial Court at the time of considering the application for permission to lead secondary evidence. The plaintiff has alleged that there was a compromise and in support of such averment, witness from the police station has been examined. He has brought the attending documents but has deposed that the original compromise is not available in the records of the Police Station. Once the case of the plaintiff is that there was a compromise between the parties in the Police Station, the testimony of the said witness is relevant to permit the petitioner to lead secondary evidence of the said compromise. However, while granting permission to lead secondary evidence, the plaintiff is not absolved of the liability to prove the execution of the said compromise and its effect on the merits of the controversy.

In view thereof, I am of the opinion that the impugned order passed by the learned trial Court cannot be sustained in law. Consequently, the revision petition is allowed. The impugned order dated 25.1.2005 is set aside and the plaintiff is permitted to prove the compromise dated 27.4.2003, by way of secondary evidence.

26.9.2006 (Hemant Gupta)
ds Judge